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March 28, 1994

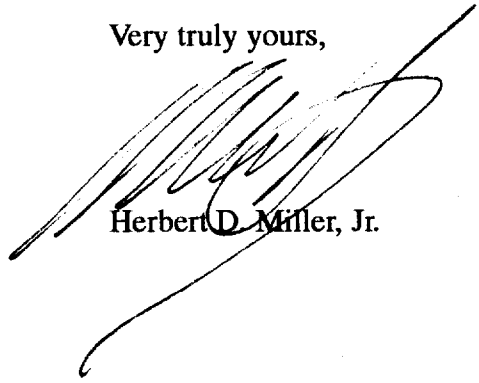
William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N. W.  
Washington, D. C. 20554

Dear Mr. Caton:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. and United States Cellular Corporation, is their Opposition to a Motion for Leave to Intervene filed in CC Docket Number 94-11 by Henry M. Zachs.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,



Herbert D. Miller, Jr.

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BEFORE THE  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

RECEIVED  
MAR 28 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
CC Docket Number  
94-11

IN RE APPLICATION OF

TELEPHONE AND DATA SYSTEMS, INC.

For facilities in the Domestic Public  
Cellular Telecommunications Service  
on Frequency Block B in Market 715,  
Wisconsin 8 (Vernon) Rural Service  
Area

TO: Honorable Joseph P. Gonzalez  
Administrative Law Judge

**OPPOSITION TO MOTION FOR LEAVE TO INTERVENE**

Telephone and Data Systems, Inc. (TDS) and United States Cellular Corporation (USCC) file herewith, by their attorneys, their Opposition to the motion of Henry M. Zachs (Zachs) for leave to intervene in this proceeding.

**I. Zachs is Not in the Class of Entities Mentioned in the HDO as Potential Intervenors.**

The *Hearing Designation Order* in this proceeding (FCC 94-29, released on February 1, 1994) (*HDO*) recognizes that

"various other parties have raised footnote three issues against either USCC or TDS in other proceedings. Any of those other parties which have pending petitions alleging these character issues may file a petition to intervene in this proceeding pursuant to Section 1.223 of the Commission's Rules." (*HDO*, ¶ 38).

Zachs has not raised any footnote three issue against USCC or TDS in this, or in any other proceeding, and does not claim that he has. Zachs is, therefore, not in the class of entities "invited" by the *HDO* to file a petition to intervene here.

**II. Zachs Petition is Based on an Erroneous Perception of the Purposes of This Proceeding.**

According to Zachs,

"The Commission noted at paragraph 38 of the *HDO* that various parties have raised 'footnote three' - type character issues against TDS

companies in other markets. It invites those parties to seek intervention here. Such parties seeking intervention will presumably also request addition of issues concerning the qualifications of TDS companies in those other markets. This proceeding, therefore, is likely to become a plenary forum for resolution of the character qualifications of TDS and the effect of any adverse findings on TDS' other interests." (Zachs Petition, pp. 3 - 4).

First, the Commission did not refer to "footnote three **type**" issues in the *HDO*; it referred to "footnote three issues." Second, while various parties have, in fact, sought intervention in order to turn this into the "plenary forum" to which Zachs alludes, that is not the purpose of the proceeding. As the Common Carrier Bureau observed in commenting on a petition for intervention filed by Portland Cellular Partnership,

"The instant proceeding is not to make a determination of USCC control in any market. The Commission has already made determinations regarding USCC control in both New Orleans (the La Star market) and in Portland. The instant proceeding is only to determine whether USCC misrepresented facts, lacked candor, or attempted to mislead the Commission in the La Star proceeding." (Common Carrier Bureau Comments in Support of Portland Cellular Partnership's Petition to Intervene, p. 3).

As to the only issue in this proceeding, Zachs concedes that he

"has no knowledge of and expresses no opinion as to whether USCC misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission in connection with the New Orleans or Wisconsin application." (Zachs Petition, p. 5).

### **III. The Potential Remedies in this Proceeding Do Not Include Action Adverse to Zach's Interests**

Zachs states a desire to intervene in order to

"place into evidence the Evansville partnership agreement and thereby provide information concerning arrangements between TDS and third parties which may be helpful to the presiding officer in fashioning any remedy in this case." (Zachs Petition, p. 3)

But the purpose of this proceeding is to determine whether USCC lacked candor in the *la Star* proceeding (Issue 1) and, if so,

"whether Telephone and Data Systems, Inc. possesses the requisite character qualifications to hold the cellular Block B authorization for the Wisconsin 8 (Vernon) Rural Service Area and, accordingly, whether grant of its application would serve the public interest, convenience, and necessity." (*HDO*, ¶ 44, Issue 2).

No designated issue looks to a determination of whether TDS is qualified to hold any authorization beyond that for Wisconsin RSA 8, and the Presiding Administrative Law Judge has no basis for fashioning a remedy which involves any other authorization.

**IV Zachs Has No Economic or Other Interest in this Proceeding, and Lacks Standing to Intervene.**

The only interest claimed by Zachs relates to his 3.125 percent interest in the licensee of cellular block A, Evansville, Indiana, KNKA 517. The license there was granted on March 3, 1987 (File No. 34532-CO-CP-84) and control was transferred to Evansville Cellular Telephone Corp. on December 23, 1987 (File No. 00026-CL-TC-88). Neither the license, nor the consent to the transfer of control, was conditioned on the outcome of the *La Star* proceeding, this proceeding, or any other proceeding. Nor is revocation of that authorization even a potential outcome of this proceeding; that would require a completely separate revocation proceeding, in which the Commission would have the burdens of proceeding and of proof, see 47 U.S.C. § 312(A). Whatever intervention rights Zachs might have there (if any), he has none here.

**Conclusion**

Zachs has shown no basis on which his petition for intervention should be granted, and it clearly should be denied.

Respectfully submitted,  
TELEPHONE AND DATA SYSTEMS, INC.  
UNITED STATES CELLULAR CORPORATION

By /s/ Alan Y. Naftalin  
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By /s/ Herbert D. Miller, Jr.  
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March 28, 1994

## Certificate of Service

I, Richard Massie, a secretary in the law firm of Koteen & Naftalin, hereby certify that I have this date sent copies of the foregoing to the following by First Class United States Mail, postage prepaid:

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\* By hand

/s/   
Richard Massie  
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March 28, 1994